

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

THE UNITED STATES for the use of)
GMW Fire Protection, Inc., an Alaska)
Corporation,)

Plaintiff,)

vs.)

KANAG'IQ CONSTRUCTION CO.,)
INC., an Alaska Corporation, and)
WESTERN SURETY COMPANY, a)
South Dakota Corporation,)

Defendants.)

Case No. A05-170 CI (TMB)

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION FOR
ADDITIONAL PEREMPTORY CHALLENGES**

On January 8, 2007, counsel for the parties participated in a pretrial conference before the Court. At that time, the undersigned counsel for Defendants inquired about additional peremptory challenges for Defendants, based on the fact that there are two defendants in this case as opposed to a single defendant. Defendants support their request as follows.

Federal Civil Rule 47(b) provides that the Court shall allow the number of peremptory challenges provided by 28 U.S.C. § 1870, which provides in relevant part:

In civil cases, each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purposes of making challenges, or the court may allow additional

Eide & Gingras, P.C.
425 G Street, Suite 930
Anchorage, Alaska 99501
(907) 279-0930 telephone
(907) 279-0933 fax

1 peremptory challenges and permit them to be exercised separately or
2 jointly.

3 28 U.S.C. § 1870 (1959). Thus, it is within the Court's discretion to allow Defendants
4 additional peremptory challenges during jury selection in this case. In a case involving
5 multiple parties, the California District Court granted all parties the *maximum* number of
6 peremptory challenges allowable under 28 U.S.C. § 1870. Los Angeles Memorial
7 Coliseum v. National Football League, et al., 89 F.R.D. 497, 510 (D. Cal., 1981). In that
8 case there were cross-claims between defendants, while there are no cross-claims
9 between Defendants in this case.

10 Defendants' interests in this case, however, are potentially adverse. If Plaintiff
11 succeeds on its claim for action on the bond, Defendant Western Surety Company will
12 pursue Defendant Kanag'iq for amounts paid from the bond. The issue of additional
13 peremptory challenges frequently turns upon whether the defendants' interests are
14 adverse to each other. LNC Investments, Inc., et al. v. First Fidelity Bank, et al., 2000
15 WL 11188898 at *2 (S.D.N.Y.). The reasoning underlying this is that it is thought fair to
16 give defendants with adverse interests an additional challenge or challenges so that their
17 individual interests may be protected. Id. While Defendants' interests are not adverse at
18 this time, those interests are potentially adverse depending on the outcome at trial.

19 Therefore, to protect the individual interests of Defendants Kanag'iq and Western
20 Surety Company, they respectfully request additional peremptory challenges in a number
21 that the Court deems appropriate.
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1 DATED at Anchorage, Alaska this 15th day of January 2008.

2 EIDE & GINGRAS, P.C.
3 Attorneys for Defendants
4 Kanag'iq Construction Co., Inc. and
5 Western Surety Company

6 By: s/Thomas S. Gingras
7 Thomas S. Gingras
8 425 G Street, Suite 930
9 Anchorage, AK 99501
10 Phone: (907) 279-0930
11 Fax: (907) 279-0933
12 E-mail: tsgingras@egpalaska.com
13 Alaska Bar No. 7811098

14 CERTIFICATE OF SERVICE

15 I am a legal secretary employed by the law
16 firm of Eide & Gingras, P.C. That on this
17 15th day of January 2008, I served

18 [x] Electronically

19 a true and accurate copy of the foregoing
20 document upon the following counsel of record:

21 Sarah J. Tugman, Esq.
22 2509 Eide Street, Suite 4
23 Anchorage, AK 99503

24 EIDE & GINGRAS, P.C.

25 By: /s/Donna Charter

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Anchorage, Alaska 99501
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